

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MJD INDUSTRIES, LLC d/b/a ARES TOOL,  
a Washington limited liability company,

Plaintiff,

v.

KYTSA ENTERPRISE, CO. LTD. d/b/a  
OZARK, a Taiwanese company,

Defendant.

CASE NO. C20-0069-JCC

ORDER

This matter comes before the Court on Defendant's motion to set aside the entry of default and dismiss (Dkt. No. 19). Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS Defendant's motion for the reasons explained herein.

**I. BACKGROUND**

Defendant is a Taiwanese trading company that connects product sellers with product manufacturers. (Dkt. Nos. 21 at 1, 26 at 1.) Plaintiff sells hand tools through Amazon. (Dkt. Nos. 1 at 2–3, 26 at 1.) Plaintiff engaged Defendant to manufacture tools that it sold online from 2016 to 2019. (Dkt. Nos. 19 at 4, 24 at 2.)

After the business relationship deteriorated, Defendant filed a lawsuit in California state court on August 29, 2019, alleging Plaintiff failed to pay past due invoices. (Dkt. No. 20 at 9–

12.) When Plaintiff answered the California complaint, it raised affirmative defenses including failure to state a cause of action, offset, and unclean hands. (*Id.* at 49–50.) Plaintiff identified the facts upon which it based its affirmative defenses in response to a set of form interrogatories. (*Id.* at 55–68.) For its affirmative defenses of failure to state a cause of action, offset, and unclean hands, Plaintiff alleged that Defendant sent defective shipments and short shipments, failed to fulfill orders, fraudulently mislabeled products as “Made in Taiwan” when they were made in China, and interfered with Plaintiff’s relationship with Taiwanese factories. (*Id.* at 54–57, 59–64.)

On January 15, 2020, Plaintiff filed the instant action. (Dkt. No. 1.) Plaintiff alleges that Defendant sent defective and short shipments, failed to fulfill orders, fraudulently mislabeled products as “Made in Taiwan” when they were made in China, and interfered with Plaintiff’s relationship with Taiwanese factories. (*Id.* at 2–5.) Lukas Dong, an individual licensed to practice law in Taiwan, personally delivered the summons and complaint to Defendant’s employee at Defendant’s Taiwan offices. (Dkt. No. 30-3 at 1.) Defendant contested that service of process had been accomplished. (*See* Dkt. No. 30 at 6.)

By May 2020, Defendant had not appeared in this action. (*See id.*) On May 13, 2020, Plaintiff invited Defendant to attempt informal settlement negotiations to save the added costs of “responding to the Washington case.” (Dkt. No. 28 at 6.) Defendant’s counsel in the California action responded the same day with a proposal to “settle both the California and Washington matters.” (*Id.* at 5.) On June 2, 2020, Plaintiff moved for entry of default against Defendant, and sent Defendant’s counsel in the California action a copy of the filing. (Dkt. Nos. 12, 28 at 8.) The Clerk entered an order of default on June 3, 2020. (Dkt. No. 13.) Defendant’s counsel appeared in the action the next day, and Defendant answered Plaintiff’s complaint on June 15, 2020. (Dkt. Nos. 14, 15.) Defendant now moves to set aside the entry of default and dismiss Plaintiff’s complaint. (*See* Dkt. Nos. 19, 29.)

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## II. DISCUSSION

### A. Motion to Set Aside Entry of Default

The Court may set aside an entry of default for “good cause.” Fed. R. Civ. P. 55(c).<sup>1</sup> The Court’s discretion to do so is “especially broad when the defendant seeks to set aside an entry of default rather than a default judgment.” *Mendoza v. Wright Vineyard Mgmt.*, 783 F.2d 941, 945 (9th Cir. 1986). In determining whether there is good cause to set aside the Clerk’s entry of default, the Court must consider “whether (1) the plaintiff would be prejudiced by setting aside the default; (2) the defendant has no meritorious defense; and (3) the defendant’s culpable conduct led to the default.” *O’Connor v. State of Nevada*, 27 F.3d 357, 364 (9th Cir. 1994), *cert denied*, 514 U.S. 1021 (1995). This test, which also applies to motions seeking relief from default judgment, is more liberally applied where a party seeks relief from an entry of default. *United States v. Signed Pers. Check No. 730 of Yubran S. Mesle*, 615 F.3d 1085, 1091 n.1 (9th Cir. 2010). Except in “extreme circumstances,” a case should be decided on the merits. *Id.* at 1091 (citing *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984)).

Good cause exists to set aside the entry of default in this case. First, Plaintiff will not be prejudiced by setting aside the default. Merely having to litigate the case on the merits does not constitute sufficient prejudice. *See id.* at 1095. Second, Defendant’s insufficient service of process and compulsory counterclaim defenses are meritorious, as discussed more fully below. *See id.* at 1094 (The “meritorious defense” requirement “is satisfied when the movant alleges sufficient facts that, if true, would constitute a defense.”). Finally, the Court does not find that Defendant’s culpable conduct led to the entry of default. “A movant cannot be treated as culpable simply for having made the conscious choice not to answer; rather, to treat a failure to answer as culpable, the movant must have acted with bad faith.” *Id.* at 1092. Defendant did not act in bad faith, but rather contested that service of process had been properly effectuated and

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<sup>1</sup> Because the Court finds good cause, the Court need not address Defendant’s argument that the entry of default is void and thus setting it aside is non-discretionary. (*See* Dkt. No. 27 at 1.)

1 understood Plaintiff's invitation to negotiate an informal settlement in May 2020 to "obviate any  
2 immediate need to file an answer in the Washington action." (Dkt. Nos. 28 at 6, 30 at 6).  
3 Accordingly, the Court sets aside the entry of default.

4 **B. Motion to Dismiss**

5 Defendant moves to dismiss Plaintiff's complaint on two grounds: 1) service of process  
6 was insufficient and 2) Plaintiff should have asserted its claims in the pending California action  
7 as compulsory counterclaims. (Dkt. No. 19 at 1–3.) The Court concludes that service of process  
8 was insufficient and that Plaintiff's claims should have been brought as compulsory  
9 counterclaims in the California action.

10 1. Insufficient Service of Process

11 Service of process must be satisfied or waived before a federal court may exercise  
12 personal jurisdiction over a defendant. *See Omni Capital Int'l v. Rudolf Wolff & Co., Ltd.*, 484  
13 U.S. 97, 104 (1987); *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350  
14 (1999). "Once service is challenged, plaintiffs bear the burden of establishing that service was  
15 valid under Rule 4." *Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir. 2004). When service of  
16 process is insufficient, courts have discretion to dismiss the action or quash service but retain the  
17 case. *See Stevens v. Sec. Pac. Nat'l Bank*, 538 F.2d 1387, 1389 (9th Cir. 1976).

18 Rule 4(h)(2) governs service of process on a corporation "at a place not within any  
19 judicial district in the United States." Fed. R. Civ. P. 4(h)(2). It allows for service of process "in  
20 any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under  
21 (f)(2)(C)(i)." Plaintiff relies on Rule 4(f)(2)(A), which provides that, "if there is no  
22 internationally agreed means" of service, service may be accomplished "by a method that is  
23 reasonably calculated to give notice . . . as prescribed by the foreign country's law for service in  
24 that country in an action in its courts of general jurisdiction." Fed. R. Civ. P. 4(f)(2)(A).

25 Defendant argues that the manner of service attempted by Plaintiff—having an attorney  
26 personally deliver the summons and complaint to a receptionist at Defendant's Taiwan office—is

1 not prescribed by Taiwanese law. (Dkt. No. 19 at 11.) Defendant supports its argument with the  
2 declaration of a lawyer licensed to practice and practicing law in Taiwan who avers that Article  
3 123 of the R.O.C. Code of Civil Procedure requires a court clerk of Taiwan to administer service  
4 of process except as otherwise provided. (Dkt. No. 23 at 1, 6.) According to the declaration, the  
5 Code does not provide for service on Defendant to be accomplished by anyone other than the  
6 clerk of court. (*Id.* at 1.) Consistent with Defendant’s evidence, multiple district courts faced  
7 with this question have concluded that the Code does not permit an individual other than the  
8 court clerk to properly effectuate service on Taiwanese corporations. *See Fujitsu Ltd. v. Belkin*  
9 *Int’l, Inc.*, 782 F. Supp. 2d 868, 874–78 (N.D. Cal. 2011); *Emine Tech. Co., Ltd. v. Aten Int’l*  
10 *Co., Ltd.*, 2008 WL 5000526, slip op. at 4–5 (N.D. Cal. 2008).

11 Plaintiff’s argument and evidence to the contrary are unavailing. Plaintiff submits a  
12 declaration from a lawyer licensed to practice law in Taiwan as a Foreign Legal Affairs  
13 Attorney, opining that service by personal delivery was proper under Article 265 of the R.O.C.  
14 of Civil Procedure, which requires that, for purposes of oral argument preparation, parties must  
15 submit a pleading to the court and send a written copy or photocopy of the same directly to the  
16 opposing party. (Dkt. No. 30-3 at 2.) The Court is not persuaded that this article applies to  
17 original service of process and Plaintiff submits no additional authority to support its position.  
18 Plaintiff also argues that Article 123 of the R.O.C. Code of Civil Procedure is inapplicable  
19 because it applies when cases are filed in and governed by the laws of Taiwan. (Dkt. Nos. 30 at  
20 3–4, 30-3 at 2–3.) This argument misses the mark because Rule 4(f)(2)(A), by its very terms,  
21 requires a method prescribed by the foreign country’s law “for service in that country *in an*  
22 *action in its courts of general jurisdiction*. *See* Fed. R. Civ. P. 4(f)(2)(A) (emphasis added).  
23 Plaintiff has failed to carry its burden of establishing that service of process was sufficient.

24 Quashing service would be futile in this case. Because, as discussed below, the Court  
25 concludes that Plaintiff’s claims should have been brought as compulsory counterclaims in the  
26 California action and are thus barred in this action, giving Plaintiff another chance to accomplish

1 service of process is unnecessary.

2 2. Plaintiff's Compulsory Counterclaims

3 "Federal courts will not permit an action to be maintained where the claims asserted  
4 should have been brought as a compulsory counterclaim in an earlier action." *In re Crown*  
5 *Vantage*, 421 F.3d 963, 973 n.7 (9th Cir. 2005). Whether claims are compulsory counterclaims  
6 that should have been pleaded in an earlier state court action is a question of state law. *Pochiro v.*  
7 *Prudential Ins. Co. of Am.*, 827 F.2d 1246, 1249 (9th Cir. 1987).

8 California law requires state court defendants in civil actions to allege certain claims in a  
9 cross-complaint:

10 (a) Except as otherwise provided by statute, if a party against whom  
11 a complaint has been filed and served fails to allege in a cross-  
12 complaint any related cause of action which (at the time of serving  
13 his answer to the complaint) he has against the plaintiff, such party  
14 may not thereafter in any other action assert against the plaintiff the  
15 related cause of action not pleaded.

16 Cal. Civ. Proc. Code § 426.30 (West 2020). A "related cause of action" is a "cause of action  
17 which arises out of the same transaction, occurrence, or series of transactions or occurrences as  
18 the cause of action which the plaintiff alleges in his complaint." *Id.* § 426.10(c). The term  
19 "transaction" "may embrace a series of acts or occurrences logically interrelated." *Saunders v.*  
20 *New Cap. for Small Bus., Inc.* 41 Cal. Rptr. 703, 711 (Cal. Dist. Ct. App. 1964); *see also Cheiker*  
21 *v. Prudential Ins. Co. of Am.*, 820 F.2d 334, 337 (9th Cir. 1987). As such, the relatedness  
22 standard does not require an "absolute identity" of factual backgrounds between the two claims,  
23 "but only a logical relationship between them." *Align Tech., Inc. v. Tran*, 102 Cal. Rptr. 3d 343,  
24 351–52 (Cal. Ct. App. 2009) (quoting *Currie Med. Specialties, Inc. v. Bowen*, 186 Cal. Rptr. 543,  
25 544 (Cal. Ct. App. 1982)). The purpose of California's compulsory cross-complaint statute is to  
26 prevent piecemeal litigation. *Align Tech*, 102 Cal. Rptr. 3d at 350; *Cheiker*, 820 F.2d at 337.  
Courts liberally construe the term "transaction" to effectuate the statute's purpose of avoiding  
multiplicity of actions. *See Cheiker*, 820 F.2d at 337; *Saunders*, 41 Cal. Rptr. at 710–11.

1 The Court finds that Plaintiff's claims in this case are logically related to Defendant's  
 2 claims in the California action. Defendant's claims in the California action and Plaintiff's claims  
 3 in this action both arose out of the parties' business relationship. *See Align Tech.*, 102 Cal. Rptr.  
 4 3d at 353 (finding claims logically related when they both arose out of the parties' employment  
 5 relationship); *Saunders*, 41 Cal. Rptr. at 712 (finding claims logically related when they both  
 6 flowed from the parties' fiduciary relationship). Moreover, Plaintiff's claims in this action are  
 7 substantially similar—if not identical—to some of its affirmative defenses in the California  
 8 action.<sup>2</sup> (Dkt. Nos. 1 at 2–5, 20 at 49–50, 54–57, 59–64); *see Align Tech.*, 102 Cal. Rptr. 3d at  
 9 353–54 (finding claims logically related when one could have been offered in support of  
 10 affirmative defenses to the other). The Court finds it difficult to see how Plaintiff's claims are  
 11 truly unrelated to the California action when Plaintiff already raised them as affirmative defenses  
 12 in the California action. In sum, Plaintiff cannot assert its claims here because they should have  
 13 been brought as compulsory counterclaims in the pending California action.<sup>3</sup>

### 14 **III. CONCLUSION**

15 For the foregoing reasons, the Court GRANTS Defendant's motion to set aside the entry  
 16 of default and dismiss (Dkt. No. 19), VACATES the entry of default (Dkt. No. 13), and  
 17 DISMISSES Plaintiff's claims without prejudice.

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22 <sup>2</sup> Plaintiff argues, in part, that the action here is different from the action in California because  
 23 this action concerns the alleged violation of 15 U.S.C. § 1125 regarding false designations of  
 24 origin, which “could not be raised in the California Superior Court.” (Dkt. No. 30 at 8.)  
 25 However, the Superior Court of the State of California has concurrent jurisdiction with this Court  
 26 for claims arising under 15 U.S.C. § 1125(a). *See Entex Indus., Inc. v. Warner Commc'n*, 487 F.  
 Supp. 46, 48 (C.D. Cal. 1980).

<sup>3</sup> Nothing in this order is intended to bar Plaintiff from seeking leave to amend in the California  
 action pursuant to Cal. Civ. Proc. Code § 426.50.

1 DATED this 5th day of February 2021.

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5 John C. Coughenour  
6 UNITED STATES DISTRICT JUDGE  
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